

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Orlando Garcia,**

Plaintiff,

v.

**Community Fund 2, LLC,** a  
California Limited Liability  
Company;  
**Naji Mohmed Alwjaini**

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Orlando Garcia complains Community Fund 2, LLC, a California Limited Liability Company; Naji Mohmed Alwjaini; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk. He uses a wheelchair for mobility.

2. Defendant Community Fund 2, LLC owned the real property located at or about 6510 Foothill Blvd, Oakland, California, in August 2021.

3. Defendant Community Fund 2, LLC owns the real property located at

1 or about 6510 Foothill Blvd, Oakland, California, currently.

2 4. Defendant Naji Mohmed Alwjaini owned Foothill Discount located at  
3 or about 6510 Foothill Blvd, Oakland, California, in August 2021.

4 5. Defendant Naji Mohmed Alwjaini owns Foothill Discount (“Store”)  
5 located at or about 6510 Foothill Blvd, Oakland, California, currently.

6 6. Plaintiff does not know the true names of Defendants, their business  
7 capacities, their ownership connection to the property and business, or their  
8 relative responsibilities in causing the access violations herein complained of,  
9 and alleges a joint venture and common enterprise by all such Defendants.  
10 Plaintiff is informed and believes that each of the Defendants herein is  
11 responsible in some capacity for the events herein alleged, or is a necessary  
12 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
13 the true names, capacities, connections, and responsibilities of the  
14 Defendants are ascertained.

15  
16 **JURISDICTION & VENUE:**

17 7. The Court has subject matter jurisdiction over the action pursuant to  
18 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
19 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

20 8. Pursuant to supplemental jurisdiction, an attendant and related cause  
21 of action, arising from the same nucleus of operative facts and arising out of  
22 the same transactions, is also brought under California’s Unruh Civil Rights  
23 Act, which act expressly incorporates the Americans with Disabilities Act.

24 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
25 founded on the fact that the real property which is the subject of this action is  
26 located in this district and that Plaintiff’s cause of action arose in this district.

**FACTUAL ALLEGATIONS:**

10. Plaintiff went to Store in August 2021 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws. Not only did Plaintiff personally encounter the unlawful barriers in August 2021, but he wanted to return and patronize the business again but was specifically deterred due to his actual personal knowledge of the barriers gleaned from his encounter with them.

11. The Store is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible paths of travel in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. The Store provides paths of travel to its customers but fails to provide wheelchair accessible paths of travel.

14. A problem that plaintiff encountered was that the ramp just inside the entrance of the Store had a slope of about 31.2%.

15. Plaintiff believes that there are other features of the paths of travel that likely fail to comply with the ADA Standards and seeks to have fully compliant paths of travel available for wheelchair users.

16. On information and belief, the defendants currently fail to provide wheelchair accessible paths of travel.

17. Additionally, on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible sales counters in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

18. The Store provides sales counters to its customers but fails to provide wheelchair accessible sales counters.

19. One problem that plaintiff encountered was that the sales counter was

1 too high. There was no counter that was 36 inches or less in height that  
2 plaintiff could use for his transactions.

3 20. Plaintiff believes that there are other features of the sales counters that  
4 likely fail to comply with the ADA Standards and seeks to have fully  
5 compliant sales counters available for wheelchair users.

6 21. On information and belief, the defendants currently fail to provide  
7 wheelchair accessible sales counters.

8 22. Moreover, on the date of the plaintiff's visit, the defendants failed to  
9 provide wheelchair accessible parking in conformance with the ADA  
10 Standards as it relates to wheelchair users like the plaintiff.

11 23. The Store provides parking to its customers but fails to provide  
12 wheelchair accessible parking.

13 24. The problem that plaintiff encountered was that there was no  
14 accessible parking whatsoever in the parking lot.

15 25. Plaintiff believes that there are other features of the parking that likely  
16 fail to comply with the ADA Standards and seeks to have fully compliant  
17 parking available for wheelchair users.

18 26. On information and belief, the defendants currently fail to provide  
19 wheelchair accessible parking.

20 27. These barriers relate to and impact the plaintiff's disability. Plaintiff  
21 personally encountered these barriers.

22 28. As a wheelchair user, the plaintiff benefits from and is entitled to use  
23 wheelchair accessible facilities. By failing to provide accessible facilities, the  
24 defendants denied the plaintiff full and equal access.

25 29. The failure to provide accessible facilities created difficulty and  
26 discomfort for the Plaintiff.

27 30. The defendants have failed to maintain in working and useable  
28 conditions those features required to provide ready access to persons with

1 disabilities.

2 31. The barriers identified above are easily removed without much  
3 difficulty or expense. They are the types of barriers identified by the  
4 Department of Justice as presumably readily achievable to remove and, in  
5 fact, these barriers are readily achievable to remove. Moreover, there are  
6 numerous alternative accommodations that could be made to provide a  
7 greater level of access if complete removal were not achievable.

8 32. Plaintiff will return to the Store to avail himself of its goods and to  
9 determine compliance with the disability access laws once it is represented to  
10 him that the Store and its facilities are accessible. Plaintiff is currently  
11 deterred from doing so because of his knowledge of the existing barriers and  
12 his uncertainty about the existence of yet other barriers on the site. If the  
13 barriers are not removed, the plaintiff will face unlawful and discriminatory  
14 barriers again.

15 33. Given the obvious and blatant nature of the barriers and violations  
16 alleged herein, the plaintiff alleges, on information and belief, that there are  
17 other violations and barriers on the site that relate to his disability. Plaintiff  
18 will amend the complaint, to provide proper notice regarding the scope of this  
19 lawsuit, once he conducts a site inspection. However, please be on notice that  
20 the plaintiff seeks to have all barriers related to his disability remedied. See  
21 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
22 encounters one barrier at a site, he can sue to have all barriers that relate to  
23 his disability removed regardless of whether he personally encountered  
24 them).

25  
26 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
27 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
28 Defendants.) (42 U.S.C. section 12101, et seq.)

1       34. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
2 again herein, the allegations contained in all prior paragraphs of this  
3 complaint.

4       35. Under the ADA, it is an act of discrimination to fail to ensure that the  
5 privileges, advantages, accommodations, facilities, goods and services of any  
6 place of public accommodation is offered on a full and equal basis by anyone  
7 who owns, leases, or operates a place of public accommodation. See 42  
8 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 9           a. A failure to make reasonable modifications in policies, practices,  
10           or procedures, when such modifications are necessary to afford  
11           goods, services, facilities, privileges, advantages, or  
12           accommodations to individuals with disabilities, unless the  
13           accommodation would work a fundamental alteration of those  
14           services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 15           b. A failure to remove architectural barriers where such removal is  
16           readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
17           defined by reference to the ADA Standards.
- 18           c. A failure to make alterations in such a manner that, to the  
19           maximum extent feasible, the altered portions of the facility are  
20           readily accessible to and usable by individuals with disabilities,  
21           including individuals who use wheelchairs or to ensure that, to  
22           the maximum extent feasible, the path of travel to the altered  
23           area and the bathrooms, telephones, and drinking fountains  
24           serving the altered area, are readily accessible to and usable by  
25           individuals with disabilities. 42 U.S.C. § 12183(a)(2).

26       36. When a business provides paths of travel, it must provide accessible  
27 paths of travel.

28       37. Here, accessible paths of travel have not been provided in conformance

1 with the ADA Standards.

2 38. When a business provides sales counters, it must provide accessible  
3 sales counters.

4 39. Here, accessible sales counters have not been provided in conformance  
5 with the ADA Standards.

6 40. When a business provides parking, it must provide accessible parking.

7 41. Here, accessible parking has not been provided in conformance with  
8 the ADA Standards.

9 42. The Safe Harbor provisions of the 2010 Standards are not applicable  
10 here because the conditions challenged in this lawsuit do not comply with the  
11 1991 Standards.

12 43. A public accommodation must maintain in operable working condition  
13 those features of its facilities and equipment that are required to be readily  
14 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

15 44. Here, the failure to ensure that the accessible facilities were available  
16 and ready to be used by the plaintiff is a violation of the law.

17  
18 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
19 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
20 Code § 51-53.)

21 45. Plaintiff repleads and incorporates by reference, as if fully set forth  
22 again herein, the allegations contained in all prior paragraphs of this  
23 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
24 that persons with disabilities are entitled to full and equal accommodations,  
25 advantages, facilities, privileges, or services in all business establishment of  
26 every kind whatsoever within the jurisdiction of the State of California. Cal.  
27 Civ. Code §51(b).

28 46. The Unruh Act provides that a violation of the ADA is a violation of the

Unruh Act. Cal. Civ. Code, § 51(f).

47. Defendants' acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

48. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

**PRAYER:**

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: August 30, 2021

CENTER FOR DISABILITY ACCESS

By: \_\_\_\_\_



Amanda Seabock, Esq.  
Attorney for plaintiff